

STAT

Approved For Release 2004/03/11 : CIA-RDP80M00165A001900140001-9

Approved For Release 2004/03/11 : CIA-RDP80M00165A001900140001-9

The Act was directed to correction of a specific pattern of active military law enforcement which had resulted from the view taken by Attorney General Cushing in 1854 that, under section 27 of the Judiciary Act of 1789, United States Marshals could raise a posse comitatus comprising every person in the district above fifteen years of age "whatever may be their occupation . . . including the military of all denominations, militia, soldiers, marines, all of whom are alike bound to obey the commands of a Sheriff or Marshal." 6 Op. A.G. 466, 471, 473. Attorney General Devens in 1878 took the same view of the law, and stated that the practice had been to permit the military to be used in subordination to the marshals when such aid was needed to enforce federal process, and that he considered the practice a proper one, 16 Op. A.G. 162, 163. The Congressional debate makes it evident that the House and Senate did not share Attorney General Devens' views, see, e.g., 7 Cong. Rec. 4247 (remarks of Senator Sargent), 7 Cong. Rec. 3846-49 (remarks of Congressman Knott, sponsor of the Act). The Act has been later described as expressing "the inherited antipathy of the American to the use of troops for civil purposes", Sparks, National Development 1877-1885, 23 The American Nation 127.

This view of the Act -- that it works to prevent the use of federal troops to enforce federal or State laws in the absence of express Constitutional or statutory authority -- has prevailed in the courts as well. For example, in United States v. Jaramillo, 380 F.Supp. 1375 (D. Neb., 1974) the district court found that the Army's furnishing of material and equipment to the Federal Bureau of Investigation and the United States Marshals Service in connection with a continuing civil disorder did not violate the Act. Similarly, the court in United States v. Red Feather, 392 F.Supp. 916 (D.S.D., 1975) saw no merit to a defense contention that any involvement of military equipment in law enforcement constituted a forbidden action under the Posse Comitatus Act. The Red Feather court viewed the Act as one referring to use of army or air force personnel, not equipment.

Department of Justice  
Washington, D.C. 20530

RECEIVED  
OFFICE OF THE  
ATTORNEY GENERAL  
MAR 17 1977

MAR 17 1977

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Loan of Military Equipment for Local Law Enforcement  
Purposes During Emergencies

This memorandum examines the question whether the Posse Comitatus Act, 18 U.S.C. 1835, forbids the military services to loan specialized military equipment -- without military operators -- to local law enforcement agencies for use by the local authorities in dealing with emergency law enforcement situations.

The Act provides that:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

It was originally enacted as part of an Army Appropriations Act in the aftermath of the Civil War, and the legislative history leaves little doubt that its objective was to put an end to the use of federal troops to police state elections in the ex-Confederate states where the civil power had been re-established. See, e.g., Lieber, The Use of the Army in Aid of the Civil Power; 1/ Chandler v. United States, 171 F.2d 921, 936 (1st Cir., 1948); Gillars v. United States, 182 F.2d 962, 972 (D.C. Cir., 1960); Wrynn v. United States, 200 F.Supp. 457, 463-464.

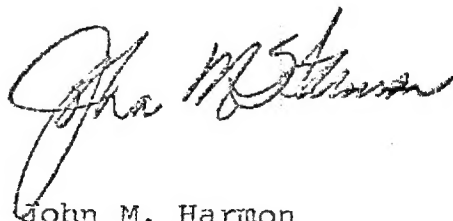
1/ War Department Document No. 64, Office of JAG, GPO 1898.

The prevention of the use of military supplies and equipment was never mentioned in the [congressional] debates, nor can it reasonably be read into the words of the Act. Only the direct active use of troops was forbidden, unless expressly authorized by the Constitution or by Act of Congress. id., at 922.

This same view is also reflected in the current printed policies of the Department of Defense. For example, DoD Directive No. 5030.46, "Assistance to the District of Columbia Government In Combating Crime", recognizes a legitimate role by which the Department may provide assistance to D.C. law enforcement agencies. Part IV-B-3 expressly authorizes the Secretary of the Army, as agent for the Department of Defense, to provide military resources of the United States Army, consistent with defense priorities, to assist the District of Columbia government in combating crime. Procedures for handling such requests are described in detail in Part VI of the Directive, which routes such requests, on a reimbursable basis, through the Under Secretary of the Army.

Likewise, Department of Defense Directive 3025.12, ch. 2 (Reprint), "Employment of Military Resources in the Event of Civil Disturbances", dated December 4, 1973 authorizes the loan of military equipment, including munitions, to local law enforcement agencies and the FBI in a variety of situations such as "Terrorist Incidents", Part IV-B. Loan procedures are set out in detail in Part X of that Directive, and also provide that -- for example -- arms or munitions may be loaned on a reimbursable basis by the Secretary or Under Secretary of the Army. Part X-C-2 also provides that requests for loans are to be handled "in keeping with the degree of urgency dictated by the situation."

It is therefore evident that the Congress, the courts, and the Department of Defense itself have recognized that the Posse Comitatus Act is no bar to the loan of supplies or equipment from the military services to local law enforcement agencies in situations where personnel of the armed forces would not be used to enforce the law.



John M. Harmon  
Acting Assistant Attorney General  
Office of Legal Counsel

MAR 31 12 39 PM '77

Approved For Release 2004/03/11 : CIA-RDP80M00185A001900140001-9

### Routing Slip

TO:		ACTION	INFO	DATE	INITIAL
1	DCI		✓		
2	DDCI		✓		
3	D/DCI/IC				
4	DDS&T		✓		
5	DDI				
6	DDA				
7	DDO		✓		
8	D/DCI/NI				
9	GC	✓			
10	LC				
11	IG				
12	Compt				
13	D/Pers				
14	D/S				
15	DTR				
16	Asst/DCI				
17	AO/DCI				
18	C/IPS				
19	DCI/SS				
20	D/EE0				
21					
22					
SUSPENSE		6 APR 77 Date			

#### Remarks:

Develop appropriate DCI possible  
response to AG Bell, if  
YOU THINK NECESSARY / ASSIGNABLE